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2011

# Nupetco Associates, LLC v. Diane Dimeo : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

IN THE MATTER OF THE ESTATE OF  
ELEANOR AMELIA NEWBERRY  
STRAND,

Deceased.

NUPETCO ASSOCIATES, LLC

Appellant,

vs.

DIANE DIMEO, as Personal Representative  
of the Estate,

Appellee

Appellate Case No. 20110215

BRIEF OF APPELLEE

ON APPEAL FROM THE SECOND JUDICIAL DISTRICT COURT  
PROBATE CASE NO. 063600007  
HONORABLE THOMAS L. KAY, PRESIDING

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Attorneys for Nupetco Associates, LLC

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UTAH APPELLATE COURTS

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### STATEMENT OF JURISDICTION

Appellee Diane Dimeo as Personal Representative of the Estate (herein “Dimeo”) agrees with the Statement of Jurisdiction of the Appellant Nupetco Associates, LLC (herein “Nupetco”), subject to the waiver and timeliness arguments raised *infra*.

### STATEMENT OF ISSUES AND STANDARD OF REVIEW

Dimeo agrees with the Statement of Issues and Standards of Review stated by Nupetco, except that the alternative issue suggesting that the Probate Court’s “Order Denying Petition of Nupetco Associates, LLC” was a final order under the doctrine enunciated in Estate of Morrison, 933 P.2d 1015, 1016-1017 (Utah App. 1997) may be inappropriate for review by this Court because it was not raised below and therefore may not be appropriate to consider on appeal. Ironically, this principle of requisite preservation at the trial court level was applied in Estate of Morrison at 1018.

### PROVISIONS OF STATUTES AND RULES

Dimeo agrees with the Statutes and Rules identified by Nupetco and will rely upon the same statutes.



## STATEMENT OF THE CASE & STATEMENT OF FACTS

Dimeo agrees with the Statement of the Case and Statement of Facts of Nupetco but wishes to add that the Petition at issue in this appeal was made after a similar motion to the Court in the quiet title case [identified in the Nupetco Brief at p. xviii and referred to therein as the “Nupetco Litigation”] and ruled upon adversely to Nupetco.<sup>1</sup> Both motions were made over 4 years after commencement of this action and the Nupetco Litigation and after Nupetco had sought affirmative relief in the Nupetco Litigation. Also, Nupetco claims in its Statement that it sought certification as a final order because of the uncertainty concerning the timing of appeals for probate orders caused by the Supreme Court’s decision in In Re: Voorhees Estate, 12 Utah 2d 361, 366 P.2d 977 (Utah 1961). That case was not raised or argued at the trial level and the only argument made to the trial court by Nupetco was the request for a Rule 54(b) certification. [R. 299-305].

## PRELIMINARY STATEMENT

Dimeo believes that the instant appeal and the Petition to Vacate the Order of Appointment in the Probate Court below is a belated attempt to obtain a second chance at certain rulings in the Nupetco Litigation that have been entered against

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<sup>1</sup> For reference and for Record purposes, a copy of the docket in the Nupetco Litigation is attached hereto as Addendum A, for reference by this Court.

Nupetco. As noted above, a similar motion was made in the Nupetco Litigation and denied by the trial court there as a collateral attack on the Order of Appointment in this case. A 4-year delay in raising the issue and the belated attempt in two separate trial courts to attack the Order appointing Dimeo to administer title problems with the Estate, emphasize the dilatory nature of Nupetco's position.

#### SUMMARY OF ARGUMENT

First, the Court in this case, by statute, was vested with jurisdiction to entertain the Petition for Adjudication of Intestacy, Determination of Heirs and Formal Appointment of a Personal Representative that is at issue in this appeal. [R. 1-4.] Regardless of the 3-year limitation provision of Utah Code Ann. § 75-3-107(1), a probate court always has jurisdiction to entertain petitions for administration of the estate, and subsections 2 and 3 of § 107 so provide. This proceeding is essentially a supervised administration of an intestate estate for the purpose of clearing title to the primary estate assets. It was for this reason that Ms. Dimeo was appointed by the Probate Court to act on behalf of the heirs, subject to court supervision. Because the 3-year limitation provision is subject to an

administration exception, Ms. Dimeo was properly appointed as a representative of the Estate to clear title to Estate assets.

The delay of Nupetco in raising its objection to the Order of Appointment was fatal. By waiting 4 years before acting, it has waived its right to appeal, modify or vacate that final Order, and any attempt to seek equity to relieve the operation of that Order is barred by law as well as the equitable doctrine of laches.

Finally, because Nupetco never became a party to the Probate proceeding, the application of Rule 54(b) was inappropriate under the tests established by the Utah Supreme Court in Pate v. Marathon Steel Company, 692 P.2d 765, 767 (Utah 1984) and its progeny. Nupetco's belated attempt to invoke the finality doctrine recognized in Voorhees Estate and Estate of Morrison, *supra*, may be unavailing because that argument was never presented to the Court below.

## ARGUMENT

### POINT I

**THE COURT BELOW HAD SUBJECT MATTER  
JURISDICTION AND FULL AUTHORITY TO ENTER THE  
ORDER OF APPOINTMENT BEING CHALLENGED BY  
NUPETCO IN THIS APPEAL.**

### SUBJECT MATTER JURISDICTION.

Utah Code Ann. § 75-1-302 states:

- (1) To the full extent permitted by the Constitution of Utah, the [probate] court has jurisdiction over all subject matter relating to:
  - (a) Estates of decedents including construction of wills and determination of heirs and successors of decedents and estates of protected persons;
- ...
- (2) The court has full power to make judgments and decrees and take all other action necessary and proper to administer justice in the matters which come before it.

One would be hard pressed to find a broader statement of jurisdiction for a trial level court. The Petition that initiated the instant action is, among other things, a Petition for a determination of heirs, a category expressly covered by the above-quoted statute. In addition, the Probate Court has subject matter jurisdiction to administer estates and to take action to facilitate resolution of problems relating to estate property such as the quiet title action authorized by the Court below. This is the business of probate courts. As noted in Section 3 of Utah Code Ann. § 75-3-107, “the court has continuing jurisdiction to handle all matters necessary to distribute the decedent’s property, including jurisdiction to determine what property was owned by the decedent at the time of death.” Nupetco’s citation to governmental immunity cases in order to buttress its

jurisdictional argument is unavailing. There, government is presumed to be immune and jurisdiction to initiate an action is only granted upon compliance with the governmental immunity act. Here, the jurisdictional grant is broad, unconditional and all-inclusive. The three-year limitation of § 107 is a limitation with numerous exceptions – it does not circumscribe jurisdiction. The Probate Court had jurisdiction to address the matters before it.

#### AUTHORITY TO APPOINT.

It is and has been the position of Dimeo that the 3-year limitation on appointment of a personal representative is “subject to an administration exception”. In other words, the presumption and general rule is that the appointment must occur within 3 years of the death of the decedent. However, if a probate case has to be filed thereafter in order to “administer the estate or determine heirs”, then an exception exists in the statutory scheme to do just that. As noted in Subsection 2 of § 107, “the [3 year] limitations in subsection 1 do not apply to proceedings to construe probated wills or determine heirs of an estate.”

Dimeo does not contest the argument of Nupetco that in an intestate estate the title to property “devolves” to the heirs. This however is a theoretical devolution and some action must be taken in order to cause that devolution to

appear of record in the office of the county recorder. Therefore, heirs must be determined, orders must be entered and recorded and at times title problems must be resolved by further administration of the estate, including quiet title actions such as the Nupetco Litigation. This is what administration of an estate means. Were that not the case, there would be no judicial or legal vehicle available to clear title and to address legal estate problems once the magic 3-year time period terminated. As the court noted in the case of Berneau v. Martino, 2009 UT 87, 223 P.3d 1128 at n.5, such a narrow reading of the 3-year time period may well constitute a denial of constitutional rights under the Open-Courts Clause of the Utah Constitution, Art. I, § 11, in foreclosing persons from access to the court and a legal remedy under such circumstances. In the Berneau case, the court used the equitable discovery rule to grant relief from the harsh application of the 3-year rule in order to avoid the constitutional conundrum just mentioned.

Dimeo acknowledges that perhaps rather than being denoted as a personal representative, she should have been designated as an administrator of the Estate, but such a technical distinction would not have changed the job she set out to accomplish, namely to clear up title to the assets of the Estate of her mother, underneath the watchful eye of the Second Judicial District Probate Court. The

limitations in each statute cited by Nupetco in support of its argument challenging the Order of Appointment are “subject to administration”. *See, e.g.*, Utah Code Ann. §§ 75-3-101, 75-3-107(2), 75-3-105(2). Dimeo submits that it is the concept of administration that is the safety valve in the Probate Code that relieves the harshness of the 3-year limitation provided in § 75-3-107(1). Without that interpretation which gives substance to the broad delegation of jurisdiction and discretion provided by the Probate Code, estates will be summarily denied access to the courts solely through the passage of time and in many cases that passage of time may be in ignorance of death, heirs, location of assets, encumbrances, or other matters that must be acknowledged and addressed in order to accomplish the orderly distribution of estate property. The narrow interpretation urged by Nupetco will eviscerate this broad, necessary discretion and will leave many heirs and litigants without an available remedy.

Nupetco argues that the heirs should be the plaintiffs in the Nupetco Litigation. It does so because it wants to assert a counterclaim against one of the heirs, and it cannot do so in a separate action because the statute of limitations has expired. It is true that the heirs could still be substituted in the Nupetco Litigation per Rules 17 and 19, Utah R. Civ. P., but substitution would not be possible in all

estate litigation if heirs were unavailable, lost, or in question. This is why Dimeo believes that the “administration exception” exists. There must be a safety valve. Otherwise access to the courts will be denied and the problem of cleaning up dormant estates will be exacerbated. The administration exception to § 107 allows the appointment herein.

## POINT II

### **NUPETCO’S MOTION TO VACATE WAS UNTIMELY AND ITS PRIOR INACTION WAIVED ANY RIGHT TO CHALLENGE DIMEO’S APPOINTMENT.**

#### LEGAL INSUFFICIENCY.

As noted above, this action is the supervised administration of an intestate estate. Heir Jerry Strand specifically requested this type of administration in the record below. [See Pet. at R. 31.] Under supervised administration, the action is *in rem*, and the rules respecting the determination of the finality of an order are somewhat different than in non-probate cases. Estate of Morrison, *supra* at 1016. The test is pragmatic and looks at the effect of the ruling on the estate case. In Morrison an order appointing an administrator was one circumstance specifically found to be a final order due to its impact on further administration of the estate. *Id.* Citing In Re: Tasanen’s Estate, 71 P. 984 (Utah 1903). One can easily see



how any appeal of an order of appointment could not await the outcome of the probate process due to the many irreversible actions such as transfer of property that could occur before the appeal was addressed. Hence, the pragmatic approach makes good sense in the probate context.

Here, Nupetco challenges the ruling of the trial court refusing to exercise its power to vacate a final order without recognizing that its “Petition” was actually a motion for relief from the order governed by Rule 60(b), Utah R. Civ. P., because the order it sought to vacate was in fact a final order for appeal purposes.

Nupetco’s argument in this regard is a *Catch-22* scenario. Below it failed to argue that a different rule for determining the finality of an order applied to probate cases, as stated in Voorhees Estate and Estate of Morrison, *supra*. Had it done so, it would have been required to concede that its Petition to Vacate was grossly out of time, coming 4 years late. Rule 60(b) recognizes that relief from a final judgment or order must be timely sought. In its Petition to the Court below, Nupetco asserted that “Ms. Dimeo failed to advise the court of subsection (1) of [§ 75-3-107].” That allegation of misconduct falls within Rule 60(b)(3), and requires a party to seek relief “not more than 3 months after the judgment, order or proceeding” *Id.* Even if the more general basis for seeking relief under Rule 60

applied, the motion must have been made “within a reasonable time.” *Id.*

Nupetco has known since July of 2006 when it was sued in the Nupetco Litigation that Ms. Dimeo was acting as Personal Representative for the Estate. Four years later, it sought to have that appointment set aside. Even under liberal construction, Nupetco’s Motion was not made within a reasonable time. *See, e.g., Estate of Pepper v. Zions First National Bank*, 711 P.2d 261 (Utah 1985). It was therefore appropriate for the Probate Court to deny Nupetco’s Petition to Vacate as being out of time.<sup>2</sup>

#### EQUITABLE INSUFFICIENCY.

In *Warren v. Dixon Ranch Co.*, 260 P.2d 741 (Utah 1953), the Supreme Court recognized that “[t]he allowance of a vacation of judgment is a creature of equity . . .” *Id.* at 742.

Equity considers factors which may be irrelevant in actions at law, such as the unfairness of the party’s conduct, his delay in bringing or continuing the action, the hardship in granting or denying relief. Although an equity court no longer has complete discretion in granting or denying relief it may exercise wide judicial discretion in weighing the factors of fairness and public convenience, and this court on appeal will reverse the

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<sup>2</sup> It is worth noting that had Nupetco sought its relief by an independent action as provided for in Rule 60(b), that independent action would have also been time-barred. Utah Code Ann. § 78B-2-305(3) (providing a three year limitation, after discovery “for relief on the ground of fraud or mistake.”)

trial court only where an abuse of this discretion is clearly shown.

Warren at 742 (citation omitted). Similarly, entry of a *nunc pro tunc* order involves the equitable powers of the Court. *E.g.*, Bagshaw v. Bagshaw, 788 P.2d 1057, 1060 (Utah App. 1990) (incorporating common law *nunc pro tunc* rules into statutory provision).<sup>3</sup> The Court is therefore required to balance the interests of the parties and the effects of Nupetco's proposed order.

"The doctrine of laches is based upon the maxim that equity aids the vigilant and not those who slumber on their rights." CIG Exploration, Inc. v. State, 2001 UT 37, ¶ 14, 24 P.3d 966, 970 (punctuation, citation omitted). Laches is a delay in asserting a right which works to the disadvantage of another. DOIT, Inc. v. Touche, Ross & Co., 926 P.2d 835, 845 (Utah 1996). Where a party seeking relief has unreasonably delayed application for the relief, resulting in prejudice to another, laches will bar that relief. Baggett v. Cyclopss Medical Systems, Inc., 935 P.2d 1265, 1270 (Utah App. 1997); Nilson-Newey & Co. v. Utah Resources International, 905 P.2d 312, 314 (Utah App. 1995).

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<sup>3</sup> In reality, *nunc pro tunc* doesn't really apply in this situation. *E.g.*, 46 Am.Jur.2d Judgments § 130 ("The power of a court to open, modify, or vacate the judgment rendered by it must be distinguished from the power of a court to amend records of its judgments by correcting mistakes or supplying omissions in it, and to apply such amendment retroactively by an entry *nunc pro tunc*.")

In the instant case Ms. Dimeo was appointed Personal Representative in April of 2006 and commenced the Nupetco Litigation in that capacity on July 17, 2006. Rather than have the original appointment decision re-evaluated by this Court, Nupetco initially made a collateral challenge in the Nupetco Litigation to the decision of the lower court which was properly rejected by the Court in that proceeding. *See, e.g., Tolle v. Fenley*, 2006 UT App. 78, ¶15, 132 P.3d 63, 67 (Utah App. 2006) (“The general rule of law is that a judgment may not be drawn in question in a collateral proceeding and an attack upon a judgment is regarded as collateral if made when the judgment is offered as the basis of a claim in a subsequent proceeding.” (citation omitted)). Nupetco knew that Ms. Dimeo had been appointed Personal Representative, apparently believed that the appointment was improper, and failed to bring the issue before the lower court for nearly four years and then only after having its collateral challenge of that decision rejected. Because of Nupetco’s failure to timely challenge Ms. Dimeo’s appointment, she has expended considerable time and money in prosecuting the Nupetco Litigation and defending against Nupetco’s counterclaims therein. If Nupetco is successful now, much of that time and money may have been wasted and the litigation will need to be restructured and pursued anew.

Here we have both a significant delay in asserting a claim accompanied by significant prejudice to Ms. Dimeo and the Estate. It is appropriate for the Court to apply the doctrine of laches to bar Nupetco's attempts to set aside and vacate the Order of the lower court.

### POINT III

#### **NUPETCO'S REQUEST FOR A RULE 54(B) CERTIFICATION OF THE ORDER DENYING ITS PETITION TO VACATE THE ORDER OF APPOINTMENT WAS IN ERROR.**

In the Court below, Nupetco asked the Court to certify the Order it appeals here as being final within the meaning of Rule 54(b), Utah Rules of Civil Procedure. The lower court declined and Nupetco appealed. Now on appeal, Nupetco suggests that such a certification was unnecessary because the Order it was appealing from was a final order even without certification, based on the rule of Voorhees Estate and Estate of Morrison, *supra*. This latter argument, however, was not presented to the Court below. Frankly, Dimeo agrees that the Order of Appointment was a final order when entered in 2006. The problem is that Nupetco did nothing about it for 4 years. As a result, the appeal time ran as did the time to petition for relief from the order to the lower court. It is likely that the Order Denying the Petition to Vacate was also a final order, but it did not require

Rule 54(b) certification and it did not meet the requirements for such certification because Nupetco was not a party to the action. The Utah Supreme Court has stated that in order for a trial court to provide a Rule 54(b) certification, three elements must be present: First, there must be multiple claims for relief or multiple parties to the action. Second, the judgment appealed from must have been entered on an order that would be appealable but for the fact that other claims or parties remain in the action. Third, the trial court in its discretion must make a determination that there is no just reason for delay of the appeal. Pate, 692 P.2d 765, 767 (Utah 1984). All of these requirements must be met. An order that is final as to a claim or a party in a multi-claim or multi-party suit is appealable under Rule 54(b) only if it is accompanied by a district court certification that no just reason exists for delaying the appeal; an order that does not wholly dispose of a claim or party is not final under Rule 54(b) and will not be appealable, even with such certification. *Id.* See also Bennion v. Penzoil Company, 826 P.2d 137 (Utah 1992).

Dimeo was reluctant to urge Rule 54(b) certification of this order because Nupetco was not a party to the action. It never sought to be made a party or never brought a separate claim or sought any other type of affirmative relief that would rise to the level of being a separate claim or conveying party status. Nupetco alleged that it

was “an interested person” in an effort to give it standing to file its Petition, but that does not make it a party to the action. Having failed to meet the requirement of disposing of a party or a separate claim, Dimeo believes that the order is not eligible for certification under Rule 54(b).

Dimeo believes that the rule of Voorhees and Morrison applies and that both the Order of Appointment and the Order Denying the Petition to Vacate were final under the pragmatic test articulated in those cases. In the end it doesn't matter because Nupetco's request is so far out of time it has forfeited any right of challenge by failure to act seasonably on its rights.

In the Court below, Dimeo argued that the Order of Appointment was a final order and the Petition to Vacate it was untimely. [R. 275-6.] That is and remains the correct focus. The 54(b) certification issue is a distraction. Whether or not this Court believes the order denying the Petition to Vacate was final or not, the fact remains that the order sought to be vacated was final and had been for 4 years and any attack was untimely. In either event, Nupetco's attack on it must fail.


### CONCLUSION

The primary reason to affirm the ruling of the Probate Court below, denying the Petition to Vacate an Order of Appointment entered in 2006, is that by any measure the Petition was untimely. The Order of Appointment is no longer appealable. The subject matter jurisdiction argument is completely without merit as the Probate Court enjoys a broad, general grant of jurisdiction by the Probate Code. Finally, Rule 54(b) certification is neither necessary nor proper, but it doesn't matter much because the initial Petition was out of time.

Dimeo respectfully requests that the ruling of the Probate Court below denying the Petition to Vacate be affirmed.

DATED this 1<sup>st</sup> day of August, 2011.

**WILLIAMS & HUNT**

By   
GEORGE A. HUNT  
-and-  
RICHARD C. DIBBLEE

Attorneys for Appellee Diane Dimeo,  
as Personal Representative of the  
Estate



### CERTIFICATE OF SERVICE

I certify that on the 1<sup>st</sup> day of August, 2011, I served the original and copies of the foregoing Brief of Appellee as follows:

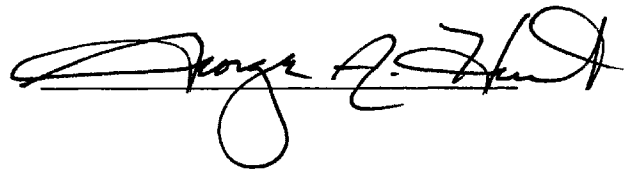
1. Two copies of the brief by hand delivery to:

Charles M. Bennett  
**CHARLES M. BENNETT, PLLC**  
505 East 200 South, Suite 200  
Salt Lake City, Utah 84102

2. A courtesy copy by email to Richard C. Dibblee at: [dibs@xmission.com](mailto:dibs@xmission.com).

3. Eight (8) copies, one of which contains the original signature of counsel for Diane Dimeo, and one (1) CD disk in searchable pdf format, by hand delivery to:

Utah Court of Appeals  
450 South State Street  
Salt Lake City, Utah 84114-0230



# ADDENDUM

2nd District - Farmington  
DAVIS COUNTY, STATE OF UTAH  
APPEALED: CASE #20100218  
DIANE DIMEO vs. NUPETCO ASSOCIATES LP

CASE NUMBER 060700354 Miscellaneous

---

CURRENT ASSIGNED JUDGE  
JOHN R MORRIS

PARTIES

Plaintiff - DIANE DIMEO  
Represented by: RICHARD C DIBBLEE  
Represented by: GEORGE A HUNT

Defendant - NUPETCO ASSOCIATES LP  
Represented by: WAYNE G PETTY

Defendant - JOHN DOES 1 THROUGH X

Defendant - KENNARD ELTINGE

Defendant - JERRY STRAND

Other Party - MICHAEL STRAND

ACCOUNT SUMMARY

TOTAL REVENUE	Amount Due:	414.50
	Amount Paid:	414.50
	Credit:	0.00
	Balance:	0.00

REVENUE DETAIL - TYPE: COMPLAINT - NO AMT S

Amount Due:	155.00
Amount Paid:	155.00
Amount Credit:	0.00
Balance:	0.00

REVENUE DETAIL - TYPE: COPY FEE

Amount Due:	1.50
Amount Paid:	1.50
Amount Credit:	0.00
Balance:	0.00

REVENUE DETAIL - TYPE: COPY FEE

Amount Due:	0.50
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Amount Paid: 0.50  
Amount Credit: 0.00  
Balance: 0.00

REVENUE DETAIL - TYPE: COPY FEE

Amount Due: 3.25  
Amount Paid: 3.25  
Amount Credit: 0.00  
Balance: 0.00

REVENUE DETAIL - TYPE: COPY FEE

Amount Due: 1.25  
Amount Paid: 1.25  
Amount Credit: 0.00  
Balance: 0.00

REVENUE DETAIL - TYPE: COPY FEE

Amount Due: 0.75  
Amount Paid: 0.75  
Amount Credit: 0.00  
Balance: 0.00

REVENUE DETAIL - TYPE: COPY FEE

Amount Due: 19.00  
Amount Paid: 19.00  
Amount Credit: 0.00  
Balance: 0.00

REVENUE DETAIL - TYPE: COPY FEE

Amount Due: 4.25  
Amount Paid: 4.25  
Amount Credit: 0.00  
Balance: 0.00

REVENUE DETAIL - TYPE: TELEPHONE/FAX CHARGE

Amount Due: 5.00  
Amount Paid: 5.00  
Amount Credit: 0.00  
Balance: 0.00

REVENUE DETAIL - TYPE: COPY FEE

Amount Due: 5.50  
Amount Paid: 5.50  
Amount Credit: 0.00  
Balance: 0.00

REVENUE DETAIL - TYPE: TELEPHONE/FAX CHARGE

Amount Due: 5.00  
Amount Paid: 5.00

Amount Credit: 0.00  
Balance: 0.00

REVENUE DETAIL - TYPE: COPY FEE

Amount Due: 2.50  
Amount Paid: 2.50  
Amount Credit: 0.00  
Balance: 0.00

REVENUE DETAIL - TYPE: COPY FEE

Amount Due: 2.00  
Amount Paid: 2.00  
Amount Credit: 0.00  
Balance: 0.00

REVENUE DETAIL - TYPE: CERTIFIED COPIES

Amount Due: 4.00  
Amount Paid: 4.00  
Amount Credit: 0.00  
Balance: 0.00

REVENUE DETAIL - TYPE: COPY FEE

Amount Due: 12.00  
Amount Paid: 12.00  
Amount Credit: 0.00  
Balance: 0.00

REVENUE DETAIL - TYPE: CERTIFICATION

Amount Due: 4.00  
Amount Paid: 4.00  
Amount Credit: 0.00  
Balance: 0.00

REVENUE DETAIL - TYPE: CERTIFIED COPIES

Amount Due: 4.50  
Amount Paid: 4.50  
Amount Credit: 0.00  
Balance: 0.00

REVENUE DETAIL - TYPE: CERTIFICATION

Amount Due: 4.00  
Amount Paid: 4.00  
Amount Credit: 0.00  
Balance: 0.00

REVENUE DETAIL - TYPE: COPY FEE

Amount Due: 1.00  
Amount Paid: 1.00  
Amount Credit: 0.00

Balance: 0.00

REVENUE DETAIL - TYPE: COPY FEE

Amount Due: 0.50  
Amount Paid: 0.50  
Amount Credit: 0.00  
Balance: 0.00

REVENUE DETAIL - TYPE: COPY FEE

Amount Due: 1.00  
Amount Paid: 1.00  
Amount Credit: 0.00  
Balance: 0.00

REVENUE DETAIL - TYPE: CROSSCLAIM 10K-MORE

Amount Due: 155.00  
Amount Paid: 155.00  
Amount Credit: 0.00  
Balance: 0.00

REVENUE DETAIL - TYPE: COPY FEE

Amount Due: 3.75  
Amount Paid: 3.75  
Amount Credit: 0.00  
Balance: 0.00

REVENUE DETAIL - TYPE: CERTIFIED COPIES

Amount Due: 1.50  
Amount Paid: 1.50  
Amount Credit: 0.00  
Balance: 0.00

REVENUE DETAIL - TYPE: CERTIFICATION

Amount Due: 4.00  
Amount Paid: 4.00  
Amount Credit: 0.00  
Balance: 0.00

REVENUE DETAIL - TYPE: COPY FEE

Amount Due: 2.75  
Amount Paid: 2.75  
Amount Credit: 0.00  
Balance: 0.00

REVENUE DETAIL - TYPE: COPY FEE

Amount Due: 11.00  
Amount Paid: 11.00  
Amount Credit: 0.00  
Balance: 0.00

CASE NOTE

PROCEEDINGS

07-17-06 Filed: Complaint

07-17-06 Filed: Complaint to Quiet Title to Real Property

07-17-06 Judge DARWIN C HANSEN assigned.

07-17-06 Fee Account created      Total Due:      155.00

07-17-06 COMPLAINT - NO AMT S      Payment Received:      155.00

Note: Code Description: COMPLAINT - NO AMT S

08-28-06 Filed: Answer

NUPETCO ASSOCIATES LP

09-19-06 Fee Account created      Total Due:      1.50

09-19-06 COPY FEE      Payment Received:      1.50

09-25-06 Fee Account created      Total Due:      0.50

09-25-06 COPY FEE      Payment Received:      0.50

09-25-06 Filed: Notice of Claim from Interested Party

09-26-06 Filed return: Certificate of Service of Discovery

Party Served: DIBBLEE, RICHARD C

Service Type: Mail

10-20-06 Filed: Memorandum in support of motion for restraining order  
restraining the personal representative

10-20-06 Filed: Motion for restraining order restraining ther personal  
representative

11-06-06 Notice - NOTICE for Case 060700354 ID 8937229

MOTION HEARING is scheduled.

Date: 12/14/2006

Time: 02:00 p.m.

Location: Courtroom 4

Justice Complex

800 West State Street

Farmington, UT 84025

Before Judge: DARWIN C HANSEN

11-06-06 MOTION HEARING scheduled on December 14, 2006 at 02:00 PM in  
Courtroom 4 with Judge HANSEN.

12-12-06 Filed: Correspondence from Mike and Rex Strand Re: Hearing on  
December 14, 2006

12-14-06 Minute Entry - Minutes for MOTION HEARING

Judge: DARWIN C HANSEN

Clerk: glendap

No Parties Present

Video

Tape Number: 12/14/06 Tape Count: 2.09

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HEARING

There is no one appearing. This is stricken from the calendar.

03-19-07 Filed: Stipulation

03-19-07 Note: Order Granting Leave to File Amended Complaint to DCH

03-21-07 Filed: Amended Complaint to Quiet Title to Real Property

03-21-07 Filed order: Order Granting Leave to File Amended Complaint

Judge DARWIN C HANSEN

Signed March 20, 2007

03-26-07 Filed: Answer to Amended Complaint

NUPETCO ASSOCIATES LP

03-29-07 Fee Account created Total Due: 3.25

03-29-07 COPY FEE Payment Received: 3.25

04-25-07 Filed: Stipulated Discovery Plan and Attorneys' Planning

Meeting Report

04-25-07 Note: \*\*Order to DCH

05-01-07 Filed order: Order

Judge DARWIN C HANSEN

Signed April 30, 2007

08-24-07 Fee Account created Total Due: 1.25

08-24-07 COPY FEE Payment Received: 1.25

11-19-07 Filed: Motion of Plaintiff for Partial Summary Judgment

Filed by: DIBBLEE, RICHARD C

11-20-07 Filed: Memorandum in Support of Motino for Partial Summary Judgment

11-20-07 Filed: Motion for Partial Summary Judgment

Filed by: PETTY, WAYNE G

11-20-07 Filed: Statement of Stipulated Facts

11-20-07 Fee Account created Total Due: 0.75

11-20-07 COPY FEE Payment Received: 0.75

Note: 1.00 cash tendered. 0.25 change given.

11-21-07 Fee Account created Total Due: 19.00

11-21-07 COPY FEE Payment Received: 19.00

Note: 20.00 cash tendered. 1 change given.

12-06-07 Filed: Reply Memorandum of Plaintiff: Cross Motions for Partial Summary Judgment

12-07-07 Filed: Objection to Plaintiff's Motion for Partial Summary Judgment

12-10-07 Fee Account created Total Due: 4.25

12-10-07 COPY FEE Payment Received: 4.25

Note: 5.00 cash tendered. 0.75 change given.

12-10-07 Filed: Motion for Relief from Stipulated Facts and any Facts

Found in the Determination for Either Parties Motion for Partial Summary Judgment and Request for Full Evidentiary Hearing

Filed by: STRAND, REX

12-10-07 Filed: Verified Memorandum in Support of Motion for Relief from Stipulated Facts and any Facts Found in the Determination of



Either Parties Motion for Partial Summary Judgment and Request  
for Full Evidentiary Hearing

12-10-07 Note: Order Granting Relief from Stipulated Facts and any Facts  
Found in the Determination of Either Parties Motion for Summary  
Judgment to DCH on Dec 20

12-14-07 Filed: Request to Submit for Decision (Oral Argument Requested)

12-17-07 Fee Account created      Total Due:      5.00

12-17-07 TELEPHONE/FAX CHARGE      Payment Received:      5.00

12-20-07 Filed: Motion to Strike  
Filed by: DIBBLEE, RICHARD C

12-20-07 Filed: Memorandum in Support of Motion to Strike

12-21-07 Filed: Objection to Strand "Motion for Relief from Stipulated  
Facts and any Facts Found in the Determination of Either  
Parties Motion for Partial Summary Judgment" and Memorandum in  
Support of Motion to Strike Strand Motion and Memorandum

12-21-07 Filed: Motion to Strike  
Filed by: PETTY, WAYNE G

12-28-07 Filed: (Denied) - Order Granting Relief from Stipulated Facts  
and Any Facts Found in the Determination of Either Parties  
Motion for Partial Summary Judgment

12-28-07 Filed order: Ruling  
Judge DARWIN C HANSEN  
Signed December 27, 2007

12-31-07 Judge JOHN R MORRIS assigned.

01-11-08 Notice - NOTICE for Case 060700354 ID 10182780  
ORAL ARGUMENT/ SUM JUDG MOT is scheduled.  
Date: 01/31/2008  
Time: 02:00 p.m.  
Location: Courtroom 4  
Justice Complex  
800 West State Street  
Farmington, UT 84025  
Before Judge: JOHN R MORRIS

01-11-08 ORAL ARGUMENT/ SUM JUDG MOT scheduled on January 31, 2008 at  
02:00 PM in Courtroom 4 with Judge MORRIS.

01-23-08 Filed: Verified memorandum in support of motion to intervene

01-23-08 Filed: motion to intervene

01-28-08 Filed: Objection to Plaintiff's Motion for Partial Summary  
Judgment

01-28-08 Note: \*\*\*\*\* OBJECTION \*\*\*\*\*

01-28-08 Filed: Motion for Partial Summary Judgment  
Filed by: NUPETCO ASSOCIATES LP,

01-28-08 Filed: Memorandum in Support of Motion for Partial Summary  
Judgment

01-28-08 Filed: Certificate of Service for Defendant Washington's Rule  
26(a)(1) Initial Disclosures

01-30-08 Fee Account created      Total Due:      5.50

01-30-08 COPY FEE      Payment Received:      5.50  
Note: 6.00 cash tendered.      0.5 change given.

01-31-08 Minute Entry - Minutes for ORAL ARGUMENT

Judge: JOHN R MORRIS

Clerk: kathyp

PRESENT

Plaintiff(s): DIANE DIMEO

Plaintiff's Attorney(s): RICHARD C DIBBLEE

GEORGE A HUNT

Defendant's Attorney(s): WAYNE G PETTY

Other Parties: REX STRAND

Video

Tape Number: JRM013108 Tape Count: 2:07/3:19

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HEARING

Mr. Rex Strand is present. His motion was not noticed for this hearing.

Mr. Hunt presents oral argument. Mr. Petty presents oral argument.

The Court would encourage the parties to attend mediation. The Court is willing to allow Mr. Petty to brief the surety issue.

Mr. Petty will have ten days to notify the Court if he will be submitting a memorandum. If he submits a memorandum, it will be done ten days after that. Mr. Hunt will respond ten days after that.

Counsel will confer with their parties regarding mediation. The Court will set a telephone conference on March 5th at 8:30 a.m.

TELEPHONE CONFERENCE is scheduled.

Date: 03/05/2008

Time: 08:30 a.m.

Location: Courtroom 4

Justice Complex

800 West State Street

Farmington, UT 84025

before Judge JOHN R MORRIS

01-31-08 Notice - NOTICE for Case 060700354 ID 10193599

TELEPHONE CONFERENCE is scheduled.

Date: 03/05/2008

Time: 08:30 a.m.

Location: Courtroom 4

Justice Complex

800 West State Street

Farmington, UT 84025

before Judge JOHN R MORRIS

01-31-08 TELEPHONE CONFERENCE scheduled on March 05, 2008 at 08:30 AM in Courtroom 4 with Judge MORRIS.

02-11-08 Fee Account created Total Due: 5.00

02-11-08 TELEPHONE/FAX CHARGE Payment Received: 5.00

02-12-08 Filed: Notice to Submit for Decision (Motion to Intervene)

02-12-08 Note: Courtsey Copy given to JRM  
02-12-08 Filed: Memorandum in Opposition to Rex Strand's Motion to Intervene  
02-13-08 Filed: Memorandum of Plaintiff in Opposition to Motion to Intervene  
02-21-08 Filed: Memorandum Regarding Comakers of the Note, Suretyship and Guarantee  
03-04-08 Filed: Memorandum Re: Issue of Discharge of Accommodation Parties as Related to Cross Motions for Partial Summary Judgment  
03-05-08 Minute Entry - Minutes for TELEPHONE CONFERENCE  
Judge: JOHN R MORRIS  
Clerk: alysons  
TELEPHONE CONFERENCE  
PRESENT  
Plaintiff's Attorney(s): RICHARD C DIBBLEE  
GEORGE A HUNT  
Defendant's Attorney(s): WAYNE G PETTY  
Tape Count: 832

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#### HEARING

This is time set for telephone conference. The parties state that they have not engaged in mediation as suggested by the Court at oral argument. Briefs were submitted on the surety issue.

The parties discuss the matter. The Court advises the parties that he will speak to Judge Kay regarding the possible impact of the Court's ruling on his case. Defense counsel shall submit a reply by 03/10/08. The Court shall rule after that time.

03-07-08 Fee Account created      Total Due:      2.50  
03-07-08 COPY FEE      Payment Received:      2.50  
03-11-08 Filed: Notice to Submit for decision  
03-12-08 Filed: Reply Memorandum Re: Suretyship and in Response to Plaintiff's Memorandum Re: Discharge of Accommodation Parties.  
04-11-08 Note: Notice to submit for motion to intervene and notice to submit for summary judgment rejected as they did not comply with rule 7D. Rejection notices sent to Attorney Petty and Rex Strand.  
04-16-08 Filed: Request to Submit for Decision  
06-04-08 Filed order: Ruling  
Judge JOHN R MORRIS  
Signed June 04, 2008  
06-05-08 Fee Account created      Total Due:      2.00  
06-05-08 COPY FEE      Payment Received:      2.00  
06-10-08 Filed: Returned mail for Rex Strand/ new address/re-sent  
07-01-08 Note: Partial Summary Judgment to JRM 07/10  
07-18-08 Filed: Motion to Alter of Amend Judgment

Filed by: PETTY, WAYNE G  
07-18-08 Filed: Memorandum in Support of Motion to Alter or Amend  
Judgment  
07-22-08 Filed order: Order Re: Motion to Intervene  
Judge JOHN R MORRIS  
Signed July 10, 2008  
07-25-08 Filed order: Partial summary judgment @J  
Judge JOHN R MORRIS  
Signed July 22, 2008  
08-19-08 Filed: Memorandum in Opposition to Motion to Alter or Amend  
Judgment  
09-19-08 Filed: Request to Submit for Decision  
09-23-08 Filed: Reply Memorandum in Support of Motion to Alter or Amend  
Judgment  
10-31-08 Fee Account created Total Due: 4.00  
10-31-08 Fee Account created Total Due: 12.00  
10-31-08 Fee Account created Total Due: 4.00  
10-31-08 CERTIFIED COPIES Payment Received: 4.00  
Note: 100.00 cash tendered. 80 change given.  
10-31-08 COPY FEE Payment Received: 12.00  
10-31-08 CERTIFICATION Payment Received: 4.00  
11-21-08 Note: Tracking date moved as tracking was started prior to the  
reply being received.  
11-24-08 Filed order: Ruling and order denying defendant's motion to  
alter or amend judgment  
Judge JOHN R MORRIS  
Signed November 24, 2008  
12-09-08 Fee Account created Total Due: 4.50  
12-09-08 Fee Account created Total Due: 4.00  
12-09-08 CERTIFIED COPIES Payment Received: 4.50  
12-09-08 CERTIFICATION Payment Received: 4.00  
04-30-09 Filed: Seconded Amended Complaint to Quiet Title to Real  
Property  
04-30-09 Filed: Motion to File Second Amended Complaint to Include True  
Name of Defendants  
Filed by: DIMEO, DIANE  
04-30-09 Filed: Motion  
Filed by: DIMEO, DIANE  
04-30-09 Filed: Affidavit  
04-30-09 Filed: Stipulation  
04-30-09 Filed: Request to Submit for Decision  
04-30-09 Note: Tracking Started - JRM  
05-04-09 Note: Order Granting Leave to File Second Amended Complaint  
(Stipulated) & 2 other Orders to JRM  
05-12-09 Filed order: Order Granting Leave to File Second Amended  
Complaint  
Judge JOHN R MORRIS  
Signed May 06, 2009  
05-12-09 Filed order: Order

Judge JOHN R MORRIS  
Signed May 06, 2009  
05-12-09 Filed order: Order  
Judge JOHN R MORRIS  
Signed May 06, 2009  
05-15-09 Fee Account created Total Due: 1.00  
05-15-09 COPY FEE Payment Received: 1.00  
06-11-09 Fee Account created Total Due: 0.50  
06-11-09 COPY FEE Payment Received: 0.50  
Note: 1.00 cash tendered. 0.50 change given.  
06-15-09 Filed: Second Amended Complaint to Quiet Title to Real Property  
06-15-09 Filed return: Proof of Service on Summons  
Party Served: kennard eltinge  
Service Type: Personal  
Service Date: May 26, 2009  
06-19-09 Fee Account created Total Due: 1.00  
06-19-09 COPY FEE Payment Received: 1.00  
06-23-09 Filed: Answer  
KENNARD ELTINGE  
  
06-25-09 Filed: Answer to Second Amended Complaint to Quiet Title to  
Real Property and Counterclaim  
06-26-09 Filed: Crossclaim 10K-MORE  
06-26-09 Fee Account created Total Due: 155.00  
06-26-09 CROSSCLAIM 10K-MORE Payment Received: 155.00  
Note: Code Description: CROSSCLAIM 10K-MORE, Mail Payment;  
07-01-09 Filed: Plaintiff's First Request for Production of Documents to  
Defendant Kennard Eltinge  
07-23-09 Filed: Response and request for Documents  
07-30-09 Filed: Memorandum in support of motion to dismiss counterclaim  
07-30-09 Filed: Motion to dismiss counterclaim  
Filed by: DIMEO, DIANE  
08-28-09 Filed: Memorandum in opposition to motion to dismiss  
counterclaim  
09-15-09 Filed: Reply memorandum in support of motion to dismiss  
counterclaim  
09-15-09 Filed: Request to submit for decision  
09-15-09 Note: Request to submit to JRM for review  
09-21-09 Filed return: Return on Summons, answer  
Party Served: Daniel Dexotell  
Service Type: Personal  
Service Date: September 14, 2009  
10-05-09 Filed: Answer to Counterclaim of Nupetco Associates LLC  
NUPETCO ASSOCIATES LP  
  
10-07-09 Note: Left msg for Atty's for oral argument hearing. No  
returned call, scheduled and sent notice.  
10-07-09 Notice - NOTICE for Case 060700354 ID 12468424  
ORAL ARGUMENT is scheduled.

Date: 11/05/2009  
Time: 02:30 p.m.  
Location: Courtroom 4  
Justice Complex  
800 West State Street  
Farmington, UT 84025  
Before Judge: JOHN R MORRIS  
10-07-09 ORAL ARGUMENT scheduled on November 05, 2009 at 02:30 PM in  
Courtroom 4 with Judge MORRIS.  
10-08-09 Fee Account created Total Due: 3.75  
10-08-09 COPY FEE Payment Received: 3.75  
Note: 5.00 cash tendered. 1.25 change given.  
10-20-09 Filed: memorandum in opposition to motion to dismiss of Jerry  
Strand  
10-21-09 Filed: Motion to Dismiss Jerry Strand  
Filed by: STRAND, JERRY  
10-21-09 ORAL ARGUMENT rescheduled on November 19, 2009 at 02:30 PM  
Reason: Conflict in attorney schedule.  
10-23-09 Filed: Amended Notice Of Oral Argument  
11-03-09 Filed: Reply and Answer  
JERRY STRAND  
  
11-19-09 Minute Entry - Minutes for ORAL ARGUMENT  
Judge: JOHN R MORRIS  
Clerk: jennifts  
PRESENT  
Plaintiff(s): DIANE DIMEO  
Plaintiff's Attorney(s): GEORGE A HUNT  
Defendant's Attorney(s): WAYNE G PETTY  
Other Parties: MICHAEL STRAND  
Video  
Tape Number: 4-111909 Tape Count: 2:42-3:00

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#### HEARING

This is the time set for Oral Argument.  
Counsel makes statements.  
The court rules as follows.  
#1. Pages Lane Property Judgment against M.S. determining amt due  
on note, Sua Sponte dismissal granted.  
Decree of foreclosure, Estate and Dimeo's 12(b) motion to dismiss,  
granted. Determination that  
Nupetco's trust deed is superior to all counterclaim defendant  
interests, Estate & Dimeo's 12(b) motion to dismiss, granted  
Sua Sponte dismissal, granted as to all counterclaim defendants.  
Award of Atty's fees and costs for judgment, Estate and Dimeo's  
12(b) motion to dismiss, Granted Sua

Sponte dismissal, Granted.

Award of attys fees and costs for foreclosure, Estate and Dimeo's 12(b) motion to dismiss, Granted.

Other proper relief, Estate and Dimeo's 12(b) motion to dismiss, Granted. Sua Sponte dismissal, Granted as to all other counterclaim defendants.

#2 Wall Street Property. Decree of foreclosure, Estate and Dimeo's 12(b) motion to dismiss, Denied. Award of attys fees and costs for foreclosure, Estate and Dimeo's 12(b) motion to dismiss, denied.

Other proper relief, Estate and Dimeo's 12(b) motion to dismiss, denied.

#3 Alternately-Pages Lane Property Unjust enrichment action against siblings, Clark and DeZotell for taxes and insurance, Estate and Dimeo's 12(b) motion to dismiss, denied.

Other proper relief, Estate and Dimeo's 12(b) motion to dismiss, granted. Sua Sponte dismissal, granted.

02-08-10 Filed: TRANSCRIPT for Hearing of 11-19-2009

02-11-10 Note: Order to Dismiss to JRM

02-12-10 Filed: Response to Request for Documents

02-12-10 Filed return: Proof of Publication

Party Served: NUPETCO ASSOCIATES LP

Service Type: Publication

Service Date: June 08, 2009

02-12-10 Filed return: Proof of Publication

Party Served: ELTINGE, KENNARD

Service Type: Publication

Service Date: June 08, 2009

02-24-10 Filed order: order on Motion to Dismiss Counterclaim

Judge JOHN R MORRIS

Signed February 17, 2010

03-11-10 Note: Nupetco's Motion to Dismiss Plaintiff's Complaint and Memorandum in Support of Nupetco's Motion to Dismiss Plaintiff's Complaint in mail to Farmington - in mail pouch on 3/12/10.

03-18-10 Filed: Nupetco's motion to dismiss plaintiffs complaint

03-18-10 Filed: Memorandum in support of Nupetco's motion to dismiss plaintiffs complaint

03-22-10 Filed: Notice of Filing Petition for Permission to Appeal from Interlocutory Order and Counterclaim

03-23-10 Filed: Letter from Utah Supreme Court

03-23-10 Note: Appealed: Case #20100218

04-13-10 Filed: Opposition to Nupetco's Motion to Dismiss

04-15-10 Filed: Order from Utah Supreme Court

04-16-10 Filed: Letter from Utah Court of Appeals

04-29-10 Filed: Reply Memorandum in Support of Nupetco's Motion to Dismiss Plaintiff's Complaint

04-29-10 Filed: Order from the Utah Court of Appeals

04-29-10 Note: Order from Utah Court of Appeals to JRM.

04-30-10 Note: Reply memorandum sent to Farmington.  
07-26-10 Filed: Remittitur  
07-26-10 Filed: Order from Utah Court of Appeals  
07-26-10 Note: Copy of Remittitur and Order to JRM.  
08-04-10 Filed: Request to Submit for Decision on Nupetco's Motion to Dismiss  
08-04-10 Note: NTS to JRM  
08-17-10 Note: Copy of NTS to Andy.  
09-24-10 ORAL ARGUMENTS scheduled on November 01, 2010 at 03:00 PM in Courtroom 6 with Judge MORRIS.  
09-24-10 Notice - NOTICE for Case 060700354 ID 13274677  
ORAL ARGUMENTS is scheduled.  
Date: 11/01/2010  
Time: 03:00 p.m.  
Location: Courtroom 6  
Justice Complex  
800 West State Street  
Farmington, UT 84025  
Before Judge: JOHN R MORRIS  
09-24-10 Filed: Notice of Oral Arguments  
11-01-10 Minute Entry - Minutes for ORAL ARGUMENTS  
Judge: JOHN R MORRIS  
Clerk: jennifts  
PRESENT  
Plaintiff's Attorney(s): GEORGE A HUNT  
Defendant's Attorney(s): WAYNE G PETTY  
Video  
Tape Number: 6-110110 Tape Count: 3:06-3:47

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#### HEARING

Counsel makes statements.  
The court will deny the claim. The motion to dismiss is denied.  
Mr. Hunt is to prepare the order from today's hearing.  
11-11-10 Filed: TRANSCRIPT for Hearing of 11-01-2010  
01-04-11 Note: Order Denying Motion to Dismiss to JRM  
01-07-11 Filed order: Order Denying Motion to Dismiss  
Judge JOHN R MORRIS  
Signed January 07, 2011  
05-05-11 Filed: Default of Defendant Lomas & Nettleton  
05-24-11 Filed: Motion for Partial Summary Judgment  
Filed by: HUNT, GEORGE A  
05-24-11 Filed: Notice of Non-Opposition of Defendant Nupetco Associates to Motion for Partial Summary Judgment of Plaintiff and Counterclaim Defendant Diane Dimeo  
05-24-11 Filed: Memorandum in Support of Motion for Partial Summary Judgment of Plaintiff and Counterclaim Defendant Diane Dimeo



05-24-11 Note: Judgment to JRM

05-31-11 Filed order: Partial Summary Judgment(Final)

Judge JOHN R MORRIS

Signed May 26, 2011

05-31-11 Case Disposition is Granted

Disposition Judge is JOHN R MORRIS

06-03-11 Fee Account created Total Due: 1.50

06-03-11 Fee Account created Total Due: 4.00

06-03-11 CERTIFIED COPIES Payment Received: 1.50

06-03-11 CERTIFICATION Payment Received: 4.00

06-22-11 Fee Account created Total Due: 2.75

06-22-11 COPY FEE Payment Received: 2.75

06-24-11 Fee Account created Total Due: 11.00

06-24-11 COPY FEE Payment Received: 11.00